

Chapter 5 Special Categories of Layouts and Roads

Scenic Roads

WHAT ARE THEY?

Any road other than a Class I or II highway can be designated as a scenic road ([RSA 231:157](#)) by the legislative body of a city or town. Scenic Road designation requires the state and/or the municipality to obtain written permission of the planning board prior to any repair, maintenance, reconstruction or paving work on the road if such work requires damage or removal of trees, or the removal or destruction of stone walls. Likewise, any utility or other person who wishes to install or maintain poles, conduits, cables, wires, pipes or similar structures must obtain prior written consent of the planning board if the work involves tree cutting or removal of stone walls. [RSA 231:158, II](#). Scenic road designation does not affect a municipality's eligibility to receive construction, maintenance or reconstruction aid. [RSA 231:158, III](#).

Trees Defined. [RSA 231:157, I](#) defines "tree" as "any woody plant" that is at least 15 inches in circumference at four feet from the ground.

NOTICE AND PUBLIC HEARING

The planning board must hold a public hearing on any request from the municipality or a utility to cut trees or remove stone walls. Notice of the public hearing must be advertised in a local newspaper two times. The second notice must appear in the newspaper at least seven days before the public hearing.

EXCEPTIONS

There are several important exceptions to the limitations on cutting trees and removing stone walls imposed by the scenic road statute, and local residents or municipal officials do not generally understand these exceptions. Lack of awareness of these exceptions has led to the common mist conception that scenic road designation is a way to prevent tree cutting and stone wall removal altogether on designated roads. But abutting landowners are exempt from the statute's limitations, and road agents and public utilities enjoy significant exceptions as well. Scenic road status is not a way to make sure landowners get notice before trees are cut on the highway right of way adjoining their land. Municipalities are already legally required to give prior notice to owners before cutting trees on any public highway, not just on scenic roads ([RSA 231:145](#) and [146](#)). In addition, even without scenic road status, utilities are required not only to give notice to landowners, but also to get their permission to cut trees. [RSA 231:172](#).

Road Agent. The road agent may remove trees that have been designated a public nuisance, in accordance with the process outlined in [RSA 231:145](#) and [146](#), when the trees pose "an imminent threat to safety or property" without the consent of and prior public hearing by the planning board. However, the road agent must first obtain the written permission of the board of selectmen before removing nuisance trees. [RSA 231:158, II](#).

Utility. When a public utility is involved in "the emergency restoration of service," it may perform work necessary to promptly restore utility service that has been "interrupted by facility damage" without a prior public hearing of the planning board or written permission of the selectmen. After performing such work, the utility must inform the selectmen of the nature of the emergency and the work performed. [RSA 231:158, II](#).

Landowners. Scenic road designation does not affect the rights of landowners to cut trees on their own property, unless the municipality has acquired the trees as shade or ornamental trees under the provisions of [RSA 231:139 through 156](#). Landowners are also free to remove or alter stone walls on

their property despite scenic road designation, within the limits provided in [RSA 472:6](#) regarding boundary markers. The only way for a municipality to prevent owner/abutters from cutting trees is by acquiring title to the highway strip, or by taking tree rights under the tree warden law. [RSA 231:154](#). See also Chapter 1.

ADDITIONAL MUNICIPAL PROVISIONS

Municipalities can adopt scenic road regulations that are different from or in addition to those outlined above as part of a scenic road designation, or as an amendment to a previous designation. Additional provisions can include, but are not limited to, criteria used by the planning board in deciding upon requests to cut trees or remove stone walls, or protections for trees smaller than 15 inches in circumference at four feet from the ground in order to establish regenerative growth along scenic roads. [RSA 231:158, V](#).

PENALTY

Any person who violates the scenic road law or any additional local regulations governing scenic roads is guilty of a violation and shall be liable for all damages resulting from such violation. [RSA 231:158, VI](#).

DESIGNATION PROCEDURE

A petition signed by 10 voters, or landowners abutting the road, can initiate the scenic road designation process, details of which are found in [RSA 231:157](#). The petitioners must provide the town clerk with a list of the names of owners of property abutting the road. Within 10 days of receiving the petition, the clerk must notify, by regular mail, all the property owners abutting the road, informing them that a scenic road petition has been received and that an article to designate the road will appear in the warrant of the next town meeting. Designation can be rescinded in like manner. In fact, in *Neville v. Highfields Farm, Inc.*, 144 N.H. 419 (1999), the New Hampshire Supreme Court held that town meeting had the authority to rescind scenic road designation in order for the landowner to have a portion of the road relocated and then designate the relocated road as scenic, over the objections of the planning board.

Although the statute provides for a process initiated by petition, [RSA 31:131](#) authorizes the selectmen to insert in the town meeting warrant themselves any article that can be inserted by petition. The selectmen then would have the duty to notify the abutters, as required by [RSA 231:157](#).

In cities and in towns with councils, voters or abutting property owners would initiate the scenic road petition, which would then be voted on by the city or town council. Presumably, the council would have authority to initiate the scenic road designation upon notification of abutting property owners.

PUBLIC LIST

Each municipality must maintain a public list of all roads, or portions thereof, that have been designated as scenic. The list must be updated annually, and must contain sufficient information to permit ready identification of the location and extent of each scenic road by reference to a town map. [RSA 231:157](#).

CONSTITUTIONALITY

In [Webster v. Town of Candia](#), 146 N.H. 430 (2001), the Court held that the provisions of the scenic road statute were not impermissibly vague and that the statute gave adequate warning to the plaintiffs that certain size trees could not be cut without planning board approval. The Court upheld the planning board's denial of a request from a developer to cut trees on a Class VI road designated as scenic in order to improve the road for reclassification as Class V, Under the town zoning ordinance

cluster development was not permitted on Class VI roads. The developer had argued that the statute failed to include standards by which the planning board decides upon the request to cut trees. But the Court wrote, "We find it implied that the planning board will exercise its discretion consistent with the Purpose of the road's scenic designation." That purpose, according to the statute's legislative history, was to "encourage the tourist attractiveness of our scenic roads in our towns and . . . permit the retention of trees and stone walls so characteristic of our New England scenery."